



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO.

IN THE MATTER
OF
JOHN K. MARTIN

DISPOSITION AGREEMENT

The State Ethics Commission and John K. Martin enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 17, 2001 the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Martin. The Commission has concluded its inquiry and, on October 16, 2001, found reasonable cause to believe that Martin violated G.L. c. 268A, §4.

The Commission and Martin now agree to the following findings of fact and conclusions of law:

Statement of Facts

1. Martin was during the time relevant a Massachusetts Highway Department civil engineer. As such, Martin was a state employee as that term is defined in G.L. c. 268A, §1.
2. In addition to his MassHighway employment, Martin is a registered civil/structural engineer and does engineering work for private parties for compensation. As a registered civil engineer, Martin is authorized to affix his signature and professional engineer's stamp to a drawing, which attests to Martin's having reviewed and certified the drawing as accurate.
3. MFS Network Technologies, Inc., known as Adesta Communications since early 2000, is a national telecommunications company that was installing a fiber optic cable network in Massachusetts during the time relevant.
4. In order for MFS/Adesta to lay fiber optic cable along a Massachusetts state highway right-of-way, the company had to pay for and obtain a permit from MassHighway for the particular location. In order for MFS/Adesta to lay fiber optic cable along any railroad or subway right-of-way, the company had to pay for and obtain a permit from the Massachusetts Bay Transportation Authority. Thereafter, the state had a right to and did inspect the installation sites pursuant to those permits. At no time did MFS/Adesta have a contractual relationship with the state agencies.

5. On February 26, 1999, Martin and MFS executed a 30-day consulting contract for Martin to perform private engineering work in relation to construction drawings that were to be submitted to the MBTA in conjunction with MFS's applications for right-of-way access. Martin was to review drawings drawn by MFS's vendor, suggest changes if any, and affix his engineer's stamp to the finished drawings. Martin was to be paid \$60 per hour for this work, and the contract was to renew automatically every 30 days unless either party gave notice to terminate.
6. Subsequently, Martin's private engineering work for MFS began to include his reviewing and stamping construction drawings to be submitted to MassHighway and other public entities.
7. Between March 12 and July 28, 1999, Martin billed MFS a total of \$5,020 for reviewing and stamping nine sets of drawings that Martin knew were to be submitted to either the MBTA or MassHighway.
8. In late July 1999, MassHighway discovered that Martin's professional engineer stamp was on some fiber-optic cable drawings that had been submitted to it, and alerted Martin to a possible conflict of interest. Martin's counsel and MassHighway's counsel agreed that Martin's counsel would write to the Ethics Commission's Legal Division to inquire whether such conduct was a violation of the conflict-of-interest law. Martin and his counsel's position at that time was that this conduct was not a conflict of interest because MFS did not contract or do business with MassHighway but, rather, MFS merely sought permits for siting the fiber-optic cable. Therefore, according to Martin and his counsel, the state did not have a direct and substantial interest in the matter because fiber-optic cables had no relationship to highways, traffic signals or areas of concern to MassHighway.
9. In August 1999, the Ethics Commission's Legal Division issued an opinion stating that Martin was prohibited from receiving compensation from a private company for reviewing construction plans that would be submitted to his state employer or any other state agency in relation to permits requiring state approval. The opinion also stated that Martin was prohibited from putting his professional engineer stamp on construction plans that would be submitted to his state employer or any other state agency in relation to permits requiring state approval. The opinion noted that it was intended solely to provide guidance for Martin's prospective conduct, not to address Martin's prior conduct.
10. Subsequently, in late August and early September 1999, MassHighway suspended Martin for three days for stamping drawings that had been submitted to MassHighway in June 1999.
11. After September 1999, Martin arranged for other professional engineers to stamp drawings that he knew were to be submitted to MassHighway. Martin invoiced MFS/Adesta \$500 for any such jobs and split the fee with the engineers who stamped the drawings.
12. On September 17 and October 6, 1999, Martin billed MFS a total of \$1,000 for his reviewing and stamping two sets of drawings that were submitted to MassHighway. After MassHighway rejected those drawings for containing Martin's stamp, the drawings were resubmitted with another engineer's stamp on them.
13. On October 20, 1999 and May 22, 2000, Martin billed MFS/Adesta a total of \$1,000 for reviewing two sets of drawings that Martin knew were to be submitted to MassHighway.

These drawings were submitted in the first instance under another engineer's stamp, and Martin split the fees with the other engineer.

14. In addition, Martin continued to put his own stamp on drawings that he knew were to be submitted to the MBTA. This occurred on three occasions in 2000, with Martin billing MFS/Adesta a total of \$1,500 for his work. According to Martin, he believed that the MBTA was not a state agency but a political subdivision of the Commonwealth with which he could contract. According to G.L. c. 268A, §1(p), any division of the Commonwealth, including any independent state authority, is a state agency.
15. Between March 12, 1999 and June 7, 2000, Martin received a total of \$8,520 in compensation from MFS/Adesta in connection with reviewing and/or stamping drawings that were to be submitted to MassHighway or the MBTA. This was work that Martin did for MFS/Adesta on his own time and not on his state time as a MassHighway employee.
16. Martin was terminated from his MassHighway position in April 2001.

Section 4(a)

17. Section 4(a) of G.L. c. 268A prohibits a state employee, except as otherwise provided for by law for the proper discharge of official duties, from directly or indirectly receiving or requesting compensation¹ from anyone other than the state in relation to a particular matter² in which the state is a party or has a direct and substantial interest.
18. The decisions regarding the review and approval of applications for permits to lay fiber optic cable on state property were particular matters.
19. The state was a party to and had a direct and substantial interest in those particular matters because the state, as the property owner, has a need to know where fiber optic cables are laid on its structures, and to control the number, weight and placement of such cables. Moreover, the state had a right to and did inspect the installation sites.
20. Martin's work reviewing and stamping construction drawings for MFS/Adesta was in relation to those particular matters.
21. From March 1999 through June 2000, Martin received a total of \$8,520 in compensation from MFS/Adesta, a private party, for his work in relation to those particular matters.
22. There was no law authorizing Martin to accept this private compensation for the proper discharge of his official duties.
23. Accordingly, by receiving the private compensation as described above for his work in relation to 16 sets of drawings, Martin received compensation from someone other than the state in relation to particular matters in which the state was a party and/or had a direct and substantial interest. By doing so, Martin violated §4(a) on each of those 16 occasions.

Section 4(c)

24. Section 4(c) of G.L. c. 268A prohibits a state employee, except as otherwise than in the proper discharge of his official duties, from acting as agent for anyone other than the state in

connection with a particular matter in which the state is a party or has a direct and substantial interest.

25. By stamping drawings that Martin knew would be submitted to a state agency, Martin acted as an agent for MFS/Adesta, a private party.
26. This stamping was in connection with the above-mentioned particular matters: the decisions regarding the review and approval of applications for permits to lay fiber optic cable on state property.
27. The state was a party to and/or had a direct and substantial interest in those particular matters.
28. In addition, Martin was not acting in the proper discharge of his official duties when he stamped drawings that were to be submitted to a state agency.
29. Accordingly, by stamping drawings for MFS/Adesta on 14 occasions in connection with the foregoing particular matters, Martin acted as an agent for someone other than the state in connection with a particular matter in which the state was a party and/or had a direct and substantial interest. By doing so, Martin violated §4(c) on each of the 14 occasions.
30. The Commission is not aware of any evidence to indicate that, at the time relevant, Martin worked within MassHighway's permitting office or had contact, directly or indirectly, with persons employed at MassHighway's or the MBTA's permit-issuing offices regarding the above-mentioned drawings.
31. The Commission is particularly concerned by Martin's continuing to violate §4 even after July 1999, when his agency raised the conflict of interest issue with him, and especially after August 1999, when he received a warning and a legal opinion advising him that he could not receive compensation or perform the above-described private engineering work. Indeed, Martin continued to accept compensation in connection with such engineering work even after he had been suspended for three days for related conduct. Martin violated §4(a) a total of seven times after August 1999, receiving a total of \$3,500, and violated §4(c) a total of five times after August 1999.

In view of the foregoing violations of G.L. c. 268A by Martin, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Martin:

- (1) that Martin pay to the Commission the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §4(a) and (c);
- (2) that Martin pay to the Commission the sum of \$3,500 as a civil forfeiture of the compensation that he received for reviewing and stamping drawings submitted to the MBTA and MassHighway in violation of §4(a); and
- (3) that Martin waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in

this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 21, 2002

¹ "Compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. G.L. c. 268A, ' 1(a).

² "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, ' 1(k).